

Remarks

Introduction

Claims 81-86, 89-92, 94-108, 112, 113, 121-130, 132, 134-137, 140, 150, 160-171, 173, and 177-211 are pending.

As a preliminary matter and for the record, applicant notes that the Office Action indicates that claims 131, 133, and 172 are pending and are subject to restriction. Applicant submits that claims 131 and 133 were cancelled in the preliminary amendment dated September 12, 2003, and that claim 172 was cancelled in the amendment dated May 3, 2006.

In response to the statement in the Office Action that applicant failed to state whether all or any of the new claims were drawn to the elected invention and species set forth in the Office Action dated October 17, 2005, applicant submits that each of the present claims is drawn to the elected invention (i.e., Group III, drawn to a method of vision correction, as indicated in the October 17, 2005 Office Action). In addition, applicant submits that upon further review, the October 17, 2005 Office Action did not include an election of species. Therefore, applicant submits that the outstanding Office Action is incorrect with regards to a previous election of species.

Election/Restriction

The July 14, 2006 Office Action requires election of a single species.

Applicant elects, with traverse:

- (i) collagen other than collagen Type I (claims 190 and 208);
- (ii) recombinant collagen (claim 203);
- (iii) extracellular matrix proteins (claims 184 and 210); and
- (iv) epithelium lifted with vacuum (claims 98 and 164).

The Office Action states that all pending claims not set forth in the species sets of the July 14, 2006 Office Action are generic to the species sets. Therefore, applicant submits that all of the present claims, except for claims 189, 207; 204; and 99 encompass the elected invention and therefore are readable on the presently elected species.

Traversal

The election of the July 14, 2006 Office Action is based on the Examiner's opinion that the different species identified in the Office Action are mutually exclusive and that one is not overlapping with the other in any manner. Furthermore, the Office Action states that each species may require the finding and application of a different piece of prior art to possibly show that the particular species is not patentable as a combination with the base claim.

Applicant submits that election requirement is in error.

Applicant submits that the species identified in the Office Action are not mutually exclusive and that the claims can overlap in scope. As indicated in MPEP § 806.04(f), in order "to require restriction between claims limited to species, the claims must not overlap in scope". For example, in each of the claims identified of the species, the claims do not preclude the inclusion of the other species. As described in the present application, the lenses recited in the present claims can comprise synthetic materials, non-synthetic materials, and combinations thereof. In addition, the lenses can comprise combinations of different types of collagen (e.g., see page 19, lines 18-31). At page 23, lines 19-23, the specification states that embodiments of the lenses can be made from combinations of recombinant collagen and synthetic materials. Page 30, line 29 to page 31, line 12 describes types of proteins or protein fragments, including growth factors and extracellular matrix proteins, that can be included with the present lenses. In addition, page 44, lines 1-13 describe the use of a vacuum and a fluid in lifting a portion of the corneal epithelium. Thus, in view of the description of the present application, and the language of the present claims that does not preclude any of the other species, applicant submits that the species identified in the Office Action are not mutually exclusive, and that the present claims can overlap in scope. Therefore, applicant submits that the election requirement set forth in the July 14, 2006 Office Action is in error, and cannot be properly maintained.

In addition, regarding the contention that each species may require a different piece of prior art, applicant submits that the Examiner has already performed a search, which applicant understands included species identified in the Office Action. For example, the single search performed by the Examiner included a search of lenses comprising synthetic materials and synthetic polymeric materials (claims 89 and 90), using a vacuum to lift the corneal epithelium (claim 98), and using a fluid to lift the corneal epithelium (claim 99). Therefore, applicant submits that the search already performed by the Examiner demonstrates that a single search is

sufficient to include the presently claimed subject matter, including the species identified in the Office Action, and that election of one of the proposed species is not necessary for examination of the present application. In addition, imposing an election requirement after conducting a search and examination, and mailing an Office Action on the merits, presents an unjust burden on the applicant.

In view of the above, applicant submits that the election requirement is in error. Applicant respectfully requests that the election requirement be withdrawn, and that examination proceed with regards to each of the present claims.

In addition, to the extent that the Examiner maintains the election requirement, applicant reserves the right to rejoin the non-elected species upon the allowance of one or more generic claims.

Conclusion

In view of the foregoing remarks, applicant submits that the present reply is fully responsive to the restriction requirement. Applicant submits that the present claims, that is claims 81-86, 89-92, 94-108, 112, 113, 121-130, 132, 134-137, 140, 150, 160-171, 173, and 177-211, are in condition for allowance. If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicant's undersigned representative invites the Examiner to telephone him at the number provided below.

In addition, applicant has submitted a list of co-pending applications in applicant's previous response.

Respectfully submitted,

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/Greg S. Holtrigel, Reg. # 45374/

Greg S. Holtrigel
Registration No. 45,374
CooperVision, Inc.
Tel: 949-597-4700 x3341